

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

September 27, 2009

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
ACTING FIRST DEPUTY

LENORE N. OHYE
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAOHOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Chairperson and Members
Board of Land and Natural Resources
State of Hawaii
Honolulu, HI

Land Board Members:

SUBJECT: REQUEST APPROVAL TO AUTHORIZE THE CHAIRPERSON TO SIGN SUPPLEMENTAL AGREEMENT NO. ONE WITH KAWAIAHA'O CHURCH TO AMEND THE TIME OF PERFORMANCE (ATTACHMENT 2) UNDER THE AGREEMENT FOR GRANTS, SUBSIDIES, AND PURCHASES OF SERVICE (PROJECT NO. A00C005A, CONTRACT NO. 07012), AND TO DELEGATE AUTHORITY TO THE CHAIRPERSON TO SIGN ALL FUTURE AMENDMENTS TO GRANT-IN-AID CONTRACTS.

This submittal requests the Board to authorize the Chairperson to sign a supplement agreement with Kawaiaha'o Church to amend the time of performance of the agreement for grants, as cited above, for a 1-year extension of the grant, pursuant to the terms outlined below and subject to the approval by the Department of the Attorney General.

BACKGROUND:

The Church is a not-for-profit organization and one of the oldest Christian congregations on O'ahu. It was built in 1842 and designated a National Historic Landmark, on December 29, 1962. In 2006, it embarked on a \$14 million fundraising campaign for a campus wide renovation and expansion project in part due to structural deterioration attributed to age and exposure to the elements. By 2007, it had raised more than half of the funds needed for the project through donations and pledges. In addition, a \$1 million grant-in-aid was authorized by Act 160, SLH 2006, and approved for release from general funds and appropriated to the Church by the Governor in May 2007. On June 26, 2007, a \$1 million agreement for grants was signed by the Chairperson and Kawaiaha'o Church with an end date of July 1, 2010. Work on the project commenced in 2007 and continued until halted in 2009 to address various burial issues that resulted in two ongoing law suits. As a result, the Church has been working to obtain a successful resolution with all parties concerned in order to complete the Multi-Purpose Building Construction project.

TERMS:

To amend: Time of Performance (Attachment 2)

From: July 1, 2010 to July 1, 2011.

Outcome: 1-year extension of grant.

DISCUSSION

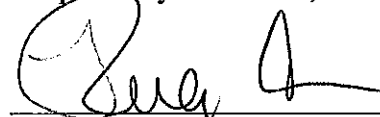
The State Historic Preservation Division staff strongly supports this request to the Board authorizing the Chairperson to sign a supplement agreement with Kawaiaha'o Church to amend the grant end date to July 1, 2011. This would provide the Church with additional time to expend the grant funds and complete the renovation and expansion of the historic complex.

Staff also recommends that the board delegate authority to the Chair to sign future amendments to grant-in-aid contracts.

RECOMMENDATION

That the Board authorizes the Chairperson to sign a supplement agreement with Kawaiaha'o Church to amend the Time of Performance (Attachment 2) to extend the end date of the Agreement for Grants, Subsidies and Purchases of Service (Project No. A00C005A, Contract No. 07012) from July 1, 2010 to July 1, 2011, and to delegate authority to the Chair to sign all future amendments to grant-in-aid contracts.

Respectfully submitted,



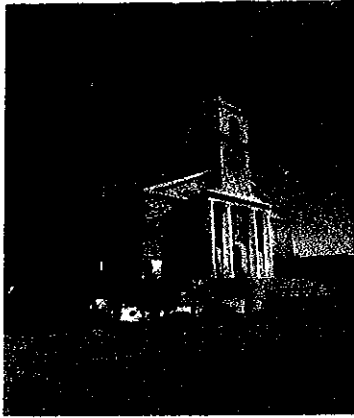
PUAALAOKALANI D. AIU, PhD
Administrator

APPROVED FOR SUBMITTAL



LAURA H. THIBAUT, Chairperson
Department of Land and Natural Resources

Attachments: Kawaiaha'o Church letter request for extension;
Supplemental Agreement No. One;
Agreement for Grants, Subsidies, and Purchase of Services



Kawaiaha'o

957 Punchbowl Street

Honolulu, Hawaii 96813

Telephone (808) 522-1333 * Fax (808) 522-1341

RECEIVED
HISTORIC PRES. CH.
DEPT. OF LAND &
NATURAL RESOURCES

Kahu Curt P. Kekuna Senior Pastor

August 25, 2010

Ms. Laura Thielen, Chairperson
Department of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl Street, Room 130
Honolulu, HI 96813

RE: Kawaiaha'o Church Grant Extension Request

Dear Ms Thielen:

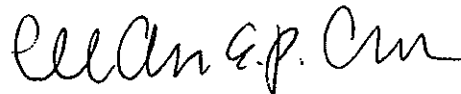
We have been notified by Mr. Randolph Lee that although the Grant-in-Aid for \$1,000,000 has matured Kawaiaha'o Church may be granted a one year extension to July 1, 2011. We wish to request your consideration to extend our grant for one year.

As you know the Church's multi-purpose building construction was stopped so that we could address certain burial issues under your jurisdiction and later because of two law suits still outstanding. We hope to be close to resolving our law suits thru settlement discussions that are ongoing but we are uncertain of its timetable and outcome. A one year extension will give us the necessary time to try to accomplish a successful resolution.

Your favorable consideration and approval will be greatly appreciated.

Sincerely,


Frank Pestana
Chairman


LeeAnn Crabb
Treasurer

cc: Randolph M. Lee III
Assistant to Administrator & Grants Manager

SUPPLEMENTAL AGREEMENT NO. ONE (1)

STATE OF HAWAII

AGREEMENT FOR GRANTS, SUBSIDIES, AND PURCHASES OF SERVICE

PROJECT NO. A00C005A, CONTRACT NO. 07012

This supplemental Agreement No. 1, executed on the respective dates indicated below, is effective as of _____, between the BOARD OF LAND AND NATURAL RESOURCES, State of Hawaii (hereinafter "STATE"), by its Chairperson (hereinafter "DIRECTOR"), whose address is 1151 Punchbowl Street, Room 130 , Honolulu, Hawaii 96813, and Kawaiiahao Church (hereinafter "AWARDEE"), a non-profit corporation under the laws of the State of Hawaii, whose business address is 957 Punchbowl Street, Honolulu, Hawaii 96813.

RECITALS

WHEREAS, the STATE and the AWARDEE entered into an Agreement for Grants, Subsidies, and Purchases of Service, Project No. A00C005A, Contract No. 07012, dated June 22, 2007, (hereinafter collectively referred to as "Agreement") whereby the AWARDEE agreed to provide the goods or services described in the Agreement, and;

WHEREAS, the parties now desire to amend the Agreement.

NOW, THEREFORE, the STATE, and the AWARDEE mutually agreed to amend the TIME OF PERFORMANCE according to the terms set forth in Attachment S2, which is attached hereto and is incorporated herein.

A tax clearance certificate from the State of Hawaii is not required to be submitted to the STATE prior to the commencing any performance under this Supplemental Agreement.

A tax clearance certificate from the Internal Revenue Service is not required to be submitted to the STATE prior to the commencing any performance under this Supplemental Agreement.

Unless amended herein, the Agreement shall remain in full force and effect.
IN VIEW OF THE ABOVE, the STATE and the AWARDEE execute this Supplemental Agreement No. 1 by their signatures on the dates below.

STATE:

By _____

Its Chairperson

AWARDEE

By _____

Its _____
(Title)

By _____

Its _____
(Title)

APPROVED AS TO FORM:

Deputy Attorney General

AWARDEE'S ACKNOWLEDGEMENT

State of _____

City and County of _____

On this _____ day of _____, 2010, before me personally appeared

to me personally known, who being by me duly sworn, did say that he/she is the

_____, of Kawaiahao Church

the AWARDEE named in the foregoing instrument, and he/she is authorized to sign
said instrument on behalf of the AWARDEE and acknowledges that he/she executed
said instrument as the free act and deed of the AWARDEE.

Notary Public _____

My Commission expires: _____

AWARDEE'S ACKNOWLEDGEMENT

State of _____

City and County of _____

On this _____ day of _____, 2010, before me personally appeared

to me personally known, who being by me duly sworn, did say that he/she is the

_____, of Kawaiahao Church

the AWARDEE named in the foregoing instrument, and he/she is authorized to sign
said instrument on behalf of the AWARDEE and acknowledges that he/she executed
said instrument as the free act and deed of the AWARDEE.

Notary Public _____

My Commission expires: _____

Attachment S2

TIME OF PERFORMANCE

This Agreement for Grants, Subsidies, and Purchases of Service, Project No. A00C005A, Contract No. 07012, is hereby extended by 1 year to July 1, 2011.

Amendment Approved:

Signature

Date

Signature

Date

STATE OF HAWAII

AGREEMENT FOR GRANTS, SUBSIDIES, AND PURCHASES OF SERVICE

This AGREEMENT, entered into on June 22, 2007, by and between the BOARD OF LAND AND NATURAL RESOURCES (hereinafter "AGENCY"), State of Hawaii (hereinafter "STATE"), by its Chairperson (hereinafter "DIRECTOR"), whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, and Kawaiahao Church (hereinafter "AWARDEE"), a non-profit corporation under the laws of the State of Hawaii, whose business address is 957 Punchbowl Street, Honolulu, HI 96813.

RECITALS

WHEREAS, Chapter 42F, Hawaii Revised Statutes, establishes standards for disbursing public funds to private organizations to fulfill specified public purposes;

WHEREAS, the AWARDEE has requested funding from the STATE for the project described in Attachment 1 of this Agreement;

WHEREAS, the STATE finds that the project will support the activities of the AWARDEE and permit the community to benefit from these activities;

WHEREAS, the Legislature has determined that the AWARDEE's project provides direct benefits to the public and accomplishes public purposes;

WHEREAS, the STATE finds that the project helps to fulfill the mission of the State Historic Preservation Division of the Department of Land and Natural Resources in the preservation of a significant historic site;

WHEREAS, the AWARDEE's proposed multi-purpose facility will house the AWARDEE's archives, thus preserving valuable historic records and documents that the State Historic Preservation Division may need to carry out its functions;

WHEREAS, general fund money is available to fund this Agreement pursuant to Act 160, Session Laws of Hawaii 2006, in the following amount:

State \$1,000,000.00

NOW, THEREFORE, in consideration of the promises contained in this Agreement, the STATE and the AWARDEE agree as follows:

A. SCOPE OF PERFORMANCE

The AWARDEE shall perform, in a proper and satisfactory manner as determined by the STATE, the project or program described in Attachment 1, which is hereby made a part of this Agreement.

B. TIME OF PERFORMANCE

The performance required of the AWARDEE under this Agreement shall be completed in accordance with the "Time of Performance" set forth in Attachment 2, which is hereby made a part of this Agreement.

C. COMPENSATION

The AWARDEE shall be compensated for performance and costs incurred under this Agreement according to the "Compensation and Payment Schedule" set forth in Attachment 3, which is hereby made a part of this Agreement.

D. STANDARDS OF CONDUCT DECLARATION

The Standards of Conduct Declaration by AWARDEE, set forth in Attachment 4, is hereby made a part of this Agreement.

E. OTHER TERMS AND CONDITIONS

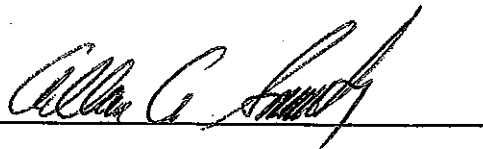
The General Conditions for Grants, Subsidy, and Purchase of Service Agreements, set forth in Attachment 5, is hereby made a part of this Agreement.

IN WITNESS WHEREOF, the STATE and the AWARDEE have executed this Agreement effective as of the date first above written.

STATE

By

Its Chairperson

A handwritten signature in black ink, appearing to read "William G. Smith", is written over a horizontal line.

AWARDEE

By

Vin. S. Tract

Its

Treasurer

*

(Title)

APPROVED AS TO FORM:

By

Ron MK Wong

Its

Vice Chairperson

*

(Title)

Randall S. Nishiyama

Deputy Attorney General

*Evidence of authority of the AWARDEE'S representative to sign this Agreement for the AWARDEE must be attached.

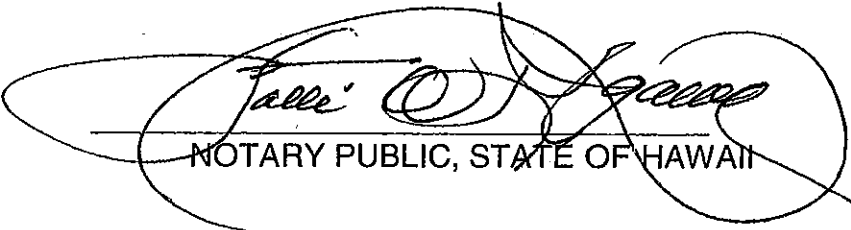
AWARDEE'S ACKNOWLEDGEMENT

STATE OF Hawaii
City and COUNTY OF Honolulu

On this 22nd day of June, 2007,
before me personally appeared Valerie H. Trotter to me personally known,
who

being by me duly sworn, did say that ~~he~~/she is
the Board of Trustees Treasurer of
Kawaiahao's Church,

the AWARDEE named in the foregoing instrument, and that ~~he~~/she is authorized to sign
said instrument on behalf of the AWARDEE, and acknowledges that ~~he~~/she executes
said instrument as the free act and deed of the AWARDEE.


NOTARY PUBLIC, STATE OF HAWAII

My commission expires August 7, 2009

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AWARDEE'S ACKNOWLEDGEMENT

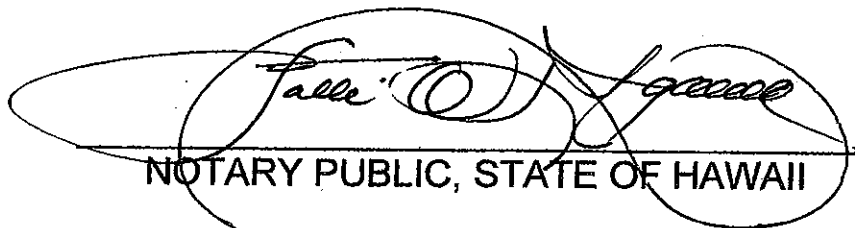
STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

)
) SS
)

On this 25th day of June, 2007, before me personally appeared Ross M. K. Wong, to me personally known, who being by me duly sworn, did that he is the Board of Trustees' Vice Chairperson, the AWARDEE named in the foregoing instrument, and that he is authorized to sign said instrument on behalf of the AWARDEE, and acknowledges that he executes said instrument as the free act and deed of the AWARDEE.

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NOTARY PUBLIC, STATE OF HAWAII

My Commission Expires: August 7, 2009

①

SCOPE OF PERFORMANCE

1. The AWARDEE shall use the grant for plans, design, construction, and renovation of existing facilities, and the construction of a new multi-purpose facility on the Kawaiahao Church campus.

The work will include additional parking and Americans with Disabilities Act improvements facilitating access for the elderly and disabled. The rehabilitated building will house new multi-purpose rooms and administrative offices. The new multi-purpose building will house an education office, a nursery, the archives, a library, a museum, general meeting rooms, a social hall, and a kitchen. Additional improvements will be made to the existing school, gymnasium, other existing recreational facilities, and other needed improvements to the site.

2. No portion of the grant money shall be used to finance any facility, place or building used or to be used primarily for sectarian instruction or study or as a place for devotional activities for religious worship in any manner which is prohibited by (i) the Constitution of the United States and the decisions of the United States Supreme Court interpreting the same, or (ii) any comparable provision of the Constitution of the State of Hawaii and the decisions of the Hawaii Supreme Court interpreting the same. In addition, no portion of the grant money shall be used to finance any facility that generates unrelated business income, as defined by the Internal Revenue Code, which is required to be reported to the Internal Revenue Service.

The AWARDEE will certify its compliance with these provisions upon submission of any requests for the payment of the grant moneys, and upon request by the STATE.

The AWARDEE agrees to pay the STATE for any grant moneys that the STATE, in its sole and reasonable discretion, determines has violated these provisions.

The provisions of this paragraph 2 shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.

Time of Performance

This Agreement shall be in effect for the period from date of contract signing through and including July 1, 2010 unless this Agreement is sooner terminated as hereinafter provided. An extension of this Agreement shall be made only by written amendment signed by the AWARDEE and the STATE.

COMPENSATION AND PAYMENT SCHEDULE

In full consideration of the services to be performed under this Agreement, the STATE and AWARDEE agree to the following:

- a) First payment of TWO THOUSAND DOLLARS (\$2,000.00), upon submission of an original invoice and the architectural plans and engineering reports relating to the project.
- b) Second payment of SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000.00), upon submission of an original invoice and a report containing a narrative and financial status of the project reflecting the FIFTY PERCENT (50%) completion of construction of the multi-purpose facility. The documentation will be in a form of letters from the contractor and the Board of Directors of Kawaihau Church. A site visit will be arranged to verify 50% completion of the project.
- c) Final payment of TWO HUNDRED FORTY EIGHT THOUSAND (\$248,000.00), upon ONE HUNDRED PERCENT (100%) completion of the project. A letter from Board of Directors of Kawaihau Church stating completion and a letter releasing the State from all claims from the building contractor shall be submitted to the STATE. A descriptive report on the project, including a detailed financial report on the uses of state funds for this project, an original invoice, a current tax clearance from the Hawaii State Department of Taxation and the Internal Revenue Service, and a Certification of Compliance for Final Payment (SPO Form 22) shall be submitted to the STATE. Final payment shall be made in accordance with, and subject to the provisions contained in this Agreement and the approval by the STATE of the final descriptive and financial reports and other required documentation.

AWARDEE'S STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Agency" means and includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices; and all independent commissions and other establishments of the state government but excluding the courts.

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges. (Section 84-3, HRS).

On behalf of Kawaiahao Church AWARDEE, the undersigned does declare as follows:

1. AWARDEE ☐ is * ☒ is not a legislator or an employee or a business in which a legislator or an employee has a controlling interest. (Section 84-15(a), HRS).
2. AWARDEE has not been represented or assisted personally in the matter by an individual who has been an employee of the agency awarding this Contract within the preceding two years and who participated while so employed in the matter with which the Contract is directly concerned. (Section 84-15(b), HRS).
3. AWARDEE has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Contract and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of this Contract, if the legislator or employee had been involved in the development or award of the Contract. (Section 84-14 (d), HRS).
4. AWARDEE has not been represented on matters related to this Contract, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an agency employee, or in the case of the Legislature, a legislator, and participated while an

***Reminder to agency:** If the "is" block is checked and if the Contract involves goods or services of a value in excess of \$10,000, the Contract must be awarded by competitive sealed bidding under section 103D-302, HRS, or a competitive sealed proposal under section 103D-303, HRS. Otherwise, the agency may not award the Contract unless it posts a notice of its intent to award it and files a copy of the notice with the State Ethics Commission. (Section 84-15(a), HRS).

employee or legislator on matters related to this Contract. (Sections 84-18(b) and (c), HRS).

AWARDEE understands that the Contract to which this document is attached is voidable on behalf of the STATE if this Contract was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the STATE.

DATED: Honolulu,
Hawaii, _____

June 26, 2007

AWARDEE

By _____

Val. L. Trotter
(signature)

Print Name _____

Valerie L. Trotter

Print Title _____

Treasurer

Name of AWARDEE _____

Kawaihae's Church

Date _____

June 29, 2007

AWARDEE

By _____

Ross MK Wong
(signature)

Print Name _____

ROSS MK WONG

Print Title _____

VICE CHAIRPERSON BOI

Name of AWARDEE _____

KAWAIAHAO Church

Date _____

June 27, 2007

**STATE OF HAWAII
GENERAL CONDITIONS FOR GRANT, SUBSIDY, AND
PURCHASE OF SERVICE AGREEMENTS**

1. Awardee's Qualifying Standards

- a. The AWARDDEE is a profit or non-profit organization incorporated under the laws of the State of Hawaii.
- b. If the AWARDDEE is a non-profit organization, the AWARDDEE has been determined by the Internal Revenue Service to be a non-profit organization.
- c. If the AWARDDEE is a nonprofit organization, the AWARDDEE has a governing board whose members have no material conflict of interest and serve without compensation.
- d. The AWARDDEE has bylaws or policies that describe the manner in which the activities or services for which a grant or subsidy is awarded shall be conducted or provided.
- e. The AWARDDEE is licensed and accredited, in accordance with federal, state, or county statutes, rules, or ordinances, to conduct the activities or provide the services for which the grant or subsidy is awarded.

2. Statutory Conditions.

- a. The AWARDDEE has agreed to and will during the term of this Agreement:
 - (1) Employ or have under contract persons qualified to engage in the activity to be funded under this Agreement.
 - (2) Comply with applicable federal and state laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, age, sexual orientation, or disability.
 - (3) Not use public funds for entertainment or lobbying activities.
 - (4) Comply with any other requirement that the Director of Finance may prescribe to ensure adherence by the AWARDDEE to federal, state, and county laws.
- b. The AWARDDEE shall allow the contracting agency, legislative committees and their staffs, and the auditor full access to records, reports, files, and other related documents and information for purposes of

monitoring, measuring the effectiveness, and assuring the proper expenditure of the grant or subsidy. This right of access shall last as long as the records and other related documents are retained.

3. Reporting and Recordkeeping Requirements

- a. Within thirty (30) days after the expiration of the time for performance, the AWARDDEE shall submit to the STATE a Final Project Report in a form satisfactory to the STATE, documenting its overall efforts toward meeting the requirements of this Agreement and listing expenditures actually incurred in the performance of this Agreement. The AWARDDEE shall return any unencumbered funds to the STATE.
- b. The AWARDDEE shall in accordance with generally accepted accounting practices, maintain fiscal records and supporting documents and related files, papers, receipts, reports, and other evidence that sufficiently and properly reflect all direct and indirect expenditures and management and fiscal practices related to the AWARDDEE's, performance under this Agreement. The AWARDDEE shall retain all records related to the AWARDDEE's performance under this Agreement for at least three (3) years after the date of submission of the AWARDDEE's Final Project Report.

4. Smoking Policy. The AWARDDEE shall implement and maintain a written smoking policy as required by chapter 328K. Hawaii Revised Statutes.

5. Conflicts of Interest. The AWARDDEE represents that neither the AWARDDEE, nor any employee or agent of the AWARDDEE, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the AWARDDEE's performance under this Agreement.

6. Compliance with Laws. The AWARDDEE shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the AWARDDEE's performance under this Agreement.

7. Indemnification and Defense. The AWARDDEE shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, and cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or in resulting from the acts or omissions of the AWARDDEE or AWARDDEE's employees, officers, or agents under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.

8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the AWARDEE in connection with this Agreement, the AWARDEE shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
9. Insurance. The AWARDEE shall obtain, maintain, and keep in force throughout the period of this Agreement liability insurance issued by an insurance company in a combined amount of at least ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00), for bodily injury and property damage liability arising out of each occurrence, which insurance provides that it is the primary insurance for the State of Hawaii, the AGENCY, and their officers, employees, and agents for any liability arising out of or resulting from occurrences connected with the AWARDEE'S performance under this Agreement. Prior to or upon execution of this Agreement, the AWARDEE shall obtain a certificate of insurance verifying the existence of the necessary liability insurance coverage, including the coverage of the State of Hawaii, and its officers, employees, and agents. If the scheduled expiration date of the liability insurance policy is earlier than the expiration date of the time for performance under this Agreement, the AWARDEE, upon renewal of the policy, shall promptly cause to be provided to the STATE an updated certificate of insurance. The certificate of insurance shall expressly provide that the insurance policy shall not be cancelled unless the insurance Company has first given to the STATE thirty (30) calendar days' written notice of the intended cancellation.
10. Relationship of Parties; Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of this Agreement, the AWARDEE is an "independent contractor," with the authority and responsibility to control and direct the performance required under this Agreement; however, the STATE shall have a general right of inspection to determine whether, in the STATE'S opinion, the AWARDEE is in compliance with this Agreement.
 - b. The AWARDEE and the AWARDEE's employees and agents are not by reason of this Agreement, agents or employees of the STATE for any purpose, and the AWARDEE, and the AWARDEE's employees and agents shall not be entitled to claim or receive from the STATE any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
 - c. The AWARDEE shall be responsible for the accuracy, completeness, and adequacy of AWARDEE'S performance under this Agreement. Furthermore, the AWARDEE intentionally, voluntarily, and knowingly assumes the sole and entire liability to the AWARDEE's employees and agents, and to any individual not a party to this Agreement, for all loss, damage, or injury caused by the AWARDEE, or the AWARDEE's

employees or agents, in the course of their employment.

- d. The AWARDDEE shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the AWARDDEE by reason of this Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The AWARDDEE also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.
 - e. The AWARDDEE shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, Hawaii Revised Statutes, and shall comply with all requirements thereof. The AWARDDEE shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the AWARDDEE have been paid and submit the same to the STATE prior to commencing any performance under this Agreement. The AWARDDEE shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 237-45, Hawaii Revised Statutes, and paragraph 11 of these General Conditions.
 - f. The AWARDDEE is responsible for securing all employee-related insurance coverage for the AWARDDEE and the AWARDDEE's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.
11. Payment Procedures: Final Payment: Tax Clearance. All payments under this Agreement shall be made only upon submission by the AWARDDEE of original invoices specifying the amount due and certifying that it has completed performance in accordance with the Agreement. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, Hawaii Revised Statutes. Further, all payments shall be made in accordance with and subject to chapter 40, Hawaii Revised Statutes. Final payment under this Agreement shall be subject to sections 103-53 and 237-45, Hawaii Revised Statutes, showing that all delinquent taxes, if any, levied or accrued under state law against the AWARDDEE have been paid.
12. Federal Funds. if this Agreement is payable in whole or in part from federal funds, AWARDDEE agrees that, as to the portion of the obligation under this Agreement to be payable out of federal funds, the AWARDDEE shall be paid only from such funds received from the federal government, and shall not be paid from any other funds.

13. Publicity. The AWARDDEE shall, in all news releases, public statements, announcements, broadcasts, posters, programs, and other printed or published materials relating to AWARDDEE'S performance under this Agreement, acknowledge that the project, event, program, or activity is supported by the State of Hawaii and the contracting agency through appropriations made by the Legislature of the State of Hawaii.
14. Confidentiality of Material.
- a. All material given to or made available to the AWARDDEE by virtue of this Agreement, which is identified as proprietary or confidential information, will be safeguarded by the AWARDDEE and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
 - b. All information, data, or other material provided by the AWARDDEE to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, Hawaii Revised Statutes.
15. Subcontracts and Assignments. The AWARDDEE shall not assign or subcontract any of the AWARDDEE'S duties, obligations, or interests under this Agreement and no such assignment or subcontract shall be effective unless (i) the AWARDDEE obtains the prior written consent of the STATE and (ii) the AWARDDEE's assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the AWARDDEE'S assignee or subcontractor have been paid. Additionally, no assignment by the AWARDDEE of the AWARDDEE'S right to compensation under this Agreement shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, Hawaii Revised Statutes.
16. Suspension and Termination of Agreement.
- a. The STATE reserves the right at any time and for any reason to suspend this Agreement for any reasonable period, upon written notice to the AWARDDEE. Upon receipt of said notice, the AWARDDEE shall immediately comply with said notice and suspend all performance under this Agreement at the time stated.
 - b. If, for any cause, the AWARDDEE breaches this Agreement by failing to satisfactorily fulfill in a timely or proper manner the AWARDDEE's obligations under this Agreement or by failing to perform any of the promises, terms, or conditions of this Agreement, and having been given reasonable notice of and opportunity to cure such default, fails to take satisfactory corrective action within the time specified by the STATE, the STATE shall have the right to terminate this Agreement by giving written

notice to the AWARDEE of such termination at least seven (7) calendar days before the effective date of such termination. Furthermore, the STATE may terminate this Agreement without statement of cause at any time by giving written notice to the AWARDEE of such termination at least thirty (30) calendar days before the effective date of such termination.

- c. Upon termination of the Agreement, the AWARDEE, within thirty (30) days of the effective date of such termination, shall compile and submit in an orderly manner to the STATE an accounting of the work performed up to the date of termination. In such event, the AWARDEE shall be paid for the actual cost of the services rendered, if any, but in no event more than the total compensation payable to the AWARDEE under this Agreement.
 - d. If this Agreement is terminated for cause, the AWARDEE shall not be relieved of liability to the STATE for damages sustained because of any breach by the AWARDEE of this Agreement. In such event, the STATE may retain any amounts which may be due and owing to the AWARDEE until such time as the exact amount of damages due to the STATE from the AWARDEE has been determined. The STATE may also set off any damages so determined against the amounts retained.
17. Disputes. No dispute arising under this Agreement may be sued upon by the AWARDEE until after the AWARDEE's written request to the DIRECTOR to informally resolve the dispute is rejected, or until ninety (90) days after the DIRECTOR'S receipt of the AWARDEE's written request whichever comes first. While the DIRECTOR considers the AWARDEE's written request, the AWARDEE agrees to proceed diligently with the performance necessary to complete the Project unless otherwise instructed in writing by the DIRECTOR.
18. State Remedies. The AWARDEE understands that in the event that it no longer meets all of the standards and conditions set forth in paragraphs 1 and 2 of these General Conditions, or in the event that AWARDEE fails to comply with any of the other requirements, provisions, or conditions set forth in this Agreement, that the STATE may refuse to make further payments to AWARDEE under this Agreement.
19. Modifications of Agreement. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Agreement permitted by this Agreement shall be made by written amendment to this Agreement, signed by the AWARDEE and the STATE.
20. Notices. Any written notice required to be given by a party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid, to the DIRECTOR at the DIRECTOR's office in Honolulu, Hawaii or to the AWARDEE at the AWARDEE's address as indicated in the

Agreement. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The AWARDEE is responsible for notifying the DIRECTOR in writing of any change of address.

21. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Agreement. The fact that the STATE specifically refers to one section of the Hawaii Revised Statutes, and does not include other statutory sections in this Agreement shall not constitute a waiver or relinquishment of the STATE'S rights or the AWARDEE'S obligations under the statutes.
22. Severability. In the event that any provision of this Agreement is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Agreement.
23. Governing Law. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Agreement shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.